

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case No: 7705/2013

In the matter between:

[M.....] [B.....] [A.....] & 205 OTHERS

Applicants

And

THE DIRECTOR-GENERAL OF THE

DEPARTMENT OF HOME AFFAIRS

First Respondent

THE MINISTER OF HOME AFFAIRS

Second Respondent

THE ACTING MANAGER OF THE CAPE TOWN

REFUGEE OFFICE

Third Respondent

THE REFUGEE APPEAL BOARD

Fourth Respondent

THE STANDING COMMITTEE FOR REFUGEE AFFAIRS Fifth Respondent

JUDGMENT: 27 FEBRUARY 2015

STEYN, J

1. This application for urgent interim interdict relief was launched on 17 May 2013 by a group of asylum seekers. They seek an order directing the respondents to extend and/or renew forthwith at the Cape Town Refugee Office ('CTRO') the applicants' permits in terms of s 22 of the Refugees Act, 130 of 1998, ('the Act') for a period of no less than three months, and that the permits be re-extended and/or

renewed by the respondents as necessary for periods of no less than three months; not to be denied or refused an extension and/or renewal because any of the applicants originally applied for asylum at a Refugee Reception Office ('RRO') other than Cape Town; not to be endorsed with a condition that the applicant in question is to report to a RRO other than Cape Town; and not to be denied or refused an extension and/or renewal due to the absence of an applicant's file from the CTRO.

2. Applicants ask that the above order should remain valid until the resolution of each applicant's application for asylum, including any internal appeals in terms of the Act, or until all legal disputes challenging the closure of the Cape Town Refugee Reception Office, ('CTRRO'), have been finally resolved, whichever occurs first.

THE SCALABRINI CENTRE CHALLENGES:

3. The CTRRO was established in 2000 and has been inundated with applications. The Scalabrini Centre in Cape Town is a non-profit organisation which assists, promotes and protects the interests of migrant communities and displaced people. The challenges referred to in par 2 above, initially related to an application before this court of *Scalabrini Centre, Cape Town and Others v The Minister of Home Affairs and Others*, case no 11681/12, the first Scalabrini application, and later the *Scalabrini Centre, Cape Town and Others v The Minister of Home Affairs and Others*, case no 8132/14, the second Scalabrini application.

4. First respondent initially closed the CTRRO to new applicants for asylum on 30 May 2012, where after the Cape Town Temporary Refugee Facility, the 'CTTRF', operated in Cape Town. This decision was taken on review by the Scalabrini Centre, applying in Part A of the application for interim relief and in Part B for final relief. Part A sought to compel respondents to keep the CTRRO functioning pending the final determination of Part B, thereby protecting asylum seekers, pending the finalisation

of legal challenges to the closure of the CTRRO.

5. In July 2012 Davis J granted the Part A interim relief requested in the first Scalabrini application and in March 2013 the Part B relief was granted by Rogers J. The Rogers J judgment was taken on appeal to the SCA by the respondents. In September 2013 the SCA set aside the first closure decision of the CTRRO in *Minister of Home Affairs v Scalabrini Centre 2013 (6) SA 421 (SCA)*. First Respondent was allowed to reconsider the closure decision. Parts of the Rogers J judgment were approved, such as the finding that first respondent was required to consult various stakeholders before taking a decision to close a RRO and that the failure to do so rendered the closure decision unlawful and invalid.

6. On 31 January 2014 the first respondent again decided to close the CTRRO. In May 2014 the Scalabrini Centre and Others launched a second application under case no 8132/14, challenging the latest closure decision. The applicants request that the second closure decision be declared unlawful and unconstitutional and that respondents be directed to re-open and maintain a fully functional RRO in or around the Cape Town area.

7. The grounds for review of the second closure decision include the submission that the closure decision was irrational, unreasonable, unconstitutional, in violating the rights of those affected, and unlawful in that it did not comply with s 8(1) of the Act, which requires of first respondent to establish as many RROs as are necessary for the purposes of the Act.

8. The relief sought in the application before me is interim relief, pending the finalisation of the second Scalabrini application.

9. The applicants have all been issued with s 22 permits in terms of the Act. Their applications are at various stages of completion. They all applied elsewhere

than in Cape Town for refugee status, but have in the meantime moved to Cape Town. Their s 22 permits have been extended over an extended period of time at the CTRRO or the CTTRF, although they were issued with their permits elsewhere than in Cape Town.

10. In view of the latest challenge to the decision to close the CTRRO permanently, the applicants submit that if they are not protected by the interim interdict requested, they will suffer irreparable harm as they will have to abandon their lives in Cape Town to relocate to places closer to operational RROs, currently located in Pretoria, Musina, and Durban. Applicants maintain that if the second Scalabrini application is ultimately upheld, the applicants will have suffered a huge loss unnecessarily.

11. If the interim order is granted, the result will be that the respondents will continue to provide the applicants in Cape Town, instead of at the other RROs mentioned, with the services which they are granting and have been granting to

other asylum seekers over an extended period of time, only for as long as it takes for the applicants' asylum applications to be determined or until the second *Scalabrini* application is finally determined.

OPPOSITION:

12. The respondents oppose the relief sought. An affidavit was filed by Mr Mathebula, the third respondent, the Acting Office Manager of the CTTRF, situated on the Foreshore of Cape Town. He maintains that respondents have not refused to renew s 22 permits of asylum seekers who applied elsewhere than in Cape Town for refugee status and states '*upfront*' that since the launching of this application the respondents have been extending from time to time the s 22 permits of applicants as well as others whom the applicants' attorneys have added to a growing list, on the understanding that the said s 22 permits are to remain valid until the date of hearing of the application before me.

13. Respondents submitted that the relief that requires adjudication is whether or not the applicants should be directed to report to the original RRO, where they applied for refugee status, for the purpose of an interview or the hearing of an appeal, relating to their refugee status. The files pertaining to their applications are kept at the original RROs. Applications cannot be finalised in the absence of the files pertaining to the relevant applications.

14. Respondents maintain that, in the absence of an application to compel the respondents to transfer the applicants' relevant files to the CTRRO, the relief sought by applicants, that they not be directed or compelled to report to their original RROs, is legally incompetent.

15. Respondents insist that the applicants' claims are partly an attempt to abuse the refugee system and that some applicants may have come to Cape Town to

evade the processing of the asylum applications by dragging matters out and that they now thwart the respondents' attempts to deal with their asylum applications, by refusing to return to the offices where their applications may be finalised.

16. This skeptical view of applicants' motives by respondents, repeated vigorously in argument on their behalf, is equally vigorously denied by applicants. It was argued on behalf of applicants that, in fact, the majority of applicants have applied for the transfer of their files to Cape Town from the original RROs. Applicants submitted in argument that they would '*support* any order that their files should be transferred to Cape Town, since they agree that if they wish to have their permits extended on an interim basis in Cape Town, they must be prepared to have their asylum applications finalised in Cape Town. The applicants claim, in essence, that their asylum applications should be finalised in Cape Town, rather than in Pretoria, Durban or Musina, where they may have applied originally.

THE REFUGEE ACT:

17. In South Africa an asylum seeker is a person who has fled his or her country of origin and is seeking recognition and protection as a refugee in the Republic of South Africa, and whose application is still under consideration. In case of a

negative decision on his application, he/she has to leave the country voluntarily or he/she will be deported. A refugee is a person who has been granted asylum status and protection in terms of the relevant provisions of the Act.

18. The Republic of South Africa has acceded to the 1951 United Nations Convention relating to the status of refugees, as well as certain other human rights instruments and in so doing has assumed certain obligations to receive and treat in its territory refugees in accordance with the standards and principles established in international law. The Government of the Republic of South Africa therefore has an obligation to grant protection to refugees and other persons in need of protection.

19. Section 2 of the Act prohibits the refusal of entry into the Republic, or the expulsion, extradition or return to any other country if, as a result of such refusal or return or other measure, such person is compelled to return to a country where he/she may be subjected to persecution on account of race, religion, nationality, political opinion or membership of a particular social group or where his/her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing public order in the country or part of such country

20. A person qualifies for refugee status if he/she has left his home country and has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or a membership in a particular social group or if person is in need of protection, when it is established that his/her removal to his/her home country would

subject such person to danger or to a risk to his/her due to external aggression, occupation, foreign domination or other events seriously disturbing public order in the country or part of such country, resulting in a risk of cruel and unusual treatment or punishment to such person.

21. The act prescribes that the Minister is responsible for the administration of the act and that he/she may delegate his/her powers and duties under certain circumstances.

22. Section 8 of the Act provides that the Director-General of the Department of Home Affairs may establish as many Refugee Reception Offices ('RRO') in the Republic as he/she, after consultation with the Standing Committee, (for Refugee Affairs) regards as necessary for the purposes of this act. The Standing Committee, with detailed powers and duties and with prescribed qualifications and composition, must function independently and without bias.

23. The determination of and eligibility procedure of applications by asylum seekers is set out in s 21 to 24 of the Act. Generally a person enters the Republic of South Africa through a port of entry, claims to be an asylum seeker and applies, personally, in accordance with prescribed procedures for asylum. He/she will be required to furnish certain documentation and information and the applicant's data and image will be captured in the refugee system. An enquiry may be conducted to verify the supplied information.

24. Pending the outcome of the application in terms of s 21, referred to above, the Refugee Reception Officer must issue the applicant, in terms of s 22, with an asylum seeker permit, allowing the asylum seeker to sojourn in the Republic temporarily, subject to conditions, which will be endorsed on the permit, while the process of his/her status determination, pending a final decision on the application, is in

progress. The s 22 permit may be extended, or the conditions amended, or it may lapse or be withdrawn under certain circumstances. The holder of s 22 permit has the right to work and study in South Africa and is protected against deportation to his country of origin.

25. Section 24 deals with the determination of the application for asylum refugee status by the Refugee Status Determination Officer. ('RSDO'). Further information may be required or a consultation held. The RSDO should proceed with a fair adjudication of the claims for asylum, and must provide reasons for the decisions. The RSDO must, on conclusion of the status determination hearing grant asylum, or reject the application, or refer any question of law to the Standing Committee for Refugee Affairs (SCRA). Sections 25 and 26 (Chapter 4) deal with procedures relating to appeals and reviews in case of the rejection of applications.

THE FACTS

26. As stated, the applicants are asylum seekers who reside in the vicinity of Cape Town and who originally applied for asylum at RROs outside of Cape Town. They are Non-Cape Town asylum seekers, as opposed to asylum seekers who first applied in Cape Town. The Cape Town asylum seekers are still being assisted by respondents with the extensions of their s 22 permits.

27. It is required of asylum seekers/applicants to return to the RROs, often on several occasions over extended periods of time, to extend their s 22 permits. The CTRRO was, at the time of its last closure decision, in January 2014, the only RRO for more than a thousand kilometers. RROs were operational only in Pretoria, Musina and Durban. RROs that were previously established at Johannesburg and Port Elizabeth, had been closed by January 2014. The closure of the Port Elizabeth Refugee Reception Office has been successfully challenged in the Eastern Cape

High Court and an appeal to the decision has been argued at the SCA. A judgment by the SCA is anticipated.

28. It is alleged and not convincingly challenged, that the applicants are generally indigent and that they lack the support structures which would enable them to travel to the far-away RROs on a regular basis. The closure of the CTRRO will impact extremely negatively on the lives of all Non-Cape Town asylum seekers such as the applicants, as they will be compelled to abandon their lives in Cape Town to move to a place closer to an RRO, a thousand kilometers or more, away.

29. In *Scalabrini Centre, Cape Town and Others v The Minister of Home Affairs and Others*, 2013 (3) SA 531 (WCC), Rogers J, dealing with the second part of the first Scalabrini application, the challenge to the first closure decision of the CTRRO, commented as follows:

'The resultant decision is also grossly unreasonable in its effect. Thousands of asylum seekers will either have to abandon the idea of residing in the Cape

Town area while their asylum applications are assessed, or they will need to spend time and money to travel on a number of occasions to RROs in the north of the country. If they have work in Cape Town, they may lose it because of the need to take off three or four days for each attendance at an RRO. If they have dependants, they would need to leave them in the care of others or travel with them. '

30. In the same matter Davis J, in dealing with the first part of the application, the interim order to compel respondents to render services to applicants for the issuing of s 22 permits pending the challenge to the closure decision of the CTRRO, referred to the asylum seekers as a '*vulnerable group*' and commented that requiring of them to travel back and forth to renew their permits would require significant resources, which they do not possess, leading to an untenable burden and hardship.

31. The permits of the applicants are only valid for a limited period of time. When the permits expire, the asylum seeker/applicant must return to the original refugee office to have the s 22 permit extended. The applicants have approached the Refugee Office in Cape Town for extensions of their s 22 permits; they have been refused or denied extensions because they first applied for refugee status at refugee offices outside Cape Town. They submit that they are entitled to s 22 permits to be issued at the CTRRO pending the finalisation of either the Scalabrini application or the finalisation of their asylum applications, *inter alia* on the basis of '*explicit promises*' by the respondents or on the basis of law.

32. In support of their claim of '*promises*' made, applicants maintain in their founding affidavit, dated May 2013, that when the respondents in the (first) Scalabrini application, including the first, second and fifth respondent in this application, sought leave to appeal, the parties agreed that the applicants would not oppose the application, but, pending the outcome of the appeal and any further appeal, the respondents would comply as follows: '*the Cape Town temporary facility will continue to assist s 22 permit holders in the Mure to extend their s 22 permits even if the permits were issued elsewhere in the Republic.*' (Par 11, p 10 and JGC 2, p 105/106)

33. It was recorded in a letter from the Legal Resources Centre dated 22 April 2013, (JGC 2, p 106), that pending the outcome of the appeal, renewals of s 22 permits for existing applicants for asylum (irrespective of the RRO where they may have applied) will be accepted and processed at the CTRRO. On behalf of the respondents the contents of the letter were noted and it was commented: '*We agree to the agreement referred to in the above letter.*'

34. The plight of non-CT asylum seekers is evident. This court is asked to determine what should happen to these asylum seekers pending the finalisation of the challenges to the last closure decision of the CTRRO.

35. Pending the hearing of this application the parties have agreed, albeit without prejudice, to several postponements, during the course of which the number of asylum seekers increased, also by agreement. Postponements commenced by agreement as early as May 2013. The last postponement was ordered on 2

December 2014. At each postponement respondents agreed and were willing (in principle) and able to provide s 22 permit extensions to the listed asylum seekers. The postponement orders provide that the s 22 permits of the applicants set out in the list annexed, are to be extended to the date of hearing of the application, irrespective of whether the asylum seekers concerned have already received an extension. There is no evidence that administrative or capacity problems were experienced as a result of the agreed orders, or that the absence of the files of the asylum seekers created administrative or other difficulties. The orders did not require of the applicants to apply for the transfer of their files to Cape Town, or to present themselves to the original RROs where they submitted their applications for the processing of their main applications.

36. The Refugee Reception Officer opens the asylum seeker's file when he/she presents himself or herself to an RRO applying for asylum and when he/she is issued with a s 22 permit. On behalf of applicants it was pointed out that the respondents place great weight and reliance on the need for asylum seekers/applicants to return to the original RROs where their files are kept. It was argued by applicants that these files are not immobile objects; that the files usually comprise of between 20 or 30 pages, which may easily be transferred between offices by fax, mail or courier. In this age of technological advances I would think that access through the internet by officials in one office, to the contents of files in other centres, may be facilitated with relative ease.

37 It certainly seems a lot more convenient, cost effective and practical for a file to be transferred to the place where an asylum seeker resides, rather than for the asylum seeker to travel, repeatedly, to the original RRO where the file is kept. Applicants maintain in their affidavits that they all wish to have their refugee application files

transferred to be finalised in Cape Town, but it is noted that, due to the office closure decision, the respondents are not granting applications for the transfer of files.

Respondents maintain that, save for some exceptions, most of the applicants have not lodged a formal application for the transfer of their files prior to the launching of the application.

38. It is undisputed that asylum seeker applications take years to finalise, while s 22 permits have to be extended every few months, with the result that an asylum seeker frequently has to attend at RROs only for the purpose of extending a permit. I agree that to compel them to travel to far-away offices in these circumstances is illogical and unreasonable. I take note that it has been recorded that s 22 permits may be extended without a file at an RRO, other than the one where the application was launched, as has happened in this case.

39. At the hearing of the matter I asked the parties to consider an agreed or proposed order that would address the resolution of the applicants' applications for asylum, while they remained based in Cape Town and while their files remain at other centres where they originally applied for asylum. This request opened a flood gate of new and repeated written submissions and proposals.

40. Applicants proposed an order that respondents be directed to transfer to the CTRRO (or the temporary facility, as it wants to be known) the files of all the asylum seekers listed in the annexure to the order, in respect of such files as are not at the facility at present and renewing or extending the s 22 permits of the applicants.

41. Respondents reiterated that the CTRRO had been closed to applications for asylum other than in cases of asylum seeker applications launched at the CTRRO on or before 30 June 2012. First respondent's recorded closure decision provided that the services which will still be provided at the CTTRF will be the granting of a limited

once-off extensions of no less than 6 months of s 22 permits to the holders of those permits who applied for them at an RRO other than the CTRRO, subject to the express condition that they report to the RRO at which they originally applied for asylum.

42. First respondent's decision also provided that the CTTRF will consider applications for the transfer to the Facility of the files of those who applied for asylum at a RRO other than the CTRRO, in exceptional circumstances only, and on a case-by-case basis, while the CTTRF is winding down.

43. However, despite the first respondent's closure decision and the extensive reasons advanced therefore, the applicants's 22 permits were extended on several occasions for more than 6 months at a time, by agreement between the parties. It was allegedly expected of the applicants to attend at the RROs where they had originally applied in order to finalise their refugee status applications or to apply for the transfer of their files to the CTTRF, but they allegedly '*simply refused*' to do so.

44. On behalf of applicants this submission was denied. It was argued, quite correctly, that there is no indication on the documentation filed that such a condition was imposed on any applicant. This allegation by respondents ignores the hardship experienced by applicants in travelling to remote offices. It was contended by applicants that many of them had returned to the offices of their original applications, with no successful result. The stance of respondents also ignores the distinct possibility that it may have been expected of some applicants to apply for assistance at RROs that had been closed.

45. According to respondents only 6 applicants applied for the transfer of their files. This comment is denied on behalf of applicants and it was reiterated that the '*vast majority*' of applicants had requested the transfer of their files, but their requests

were refused or not carried out.

46. The comments and objections relating to probable infra-structure or capacity problems experienced by respondents causing a burden on them if files were transferred, are not supported by evidence. In any event the hardship suffered by applicants in compelling them to travel long distances, repeatedly, at risk of detention and deportation, to obtain the permits they require to survive, is much more evident and onerous.

47. Respondents submit that the court cannot competently order the transfer of files as such an order will require the additional allocation of public funds, ultimately resulting in the infringement of the doctrine of the separation of powers. In addition,

strategic and policy objectives, leading to the office closure decision would be ignored.

48. Respondents quoted extensively from *dicta* relating to the competency of the court to grant certain orders where the subject of the order is one of policy, such as how many RROs should be in existence or whether such offices may be closed, based on aspects such as administrative effectiveness and budgetary constraints. Respondents submit that the transfer of '*thousands*' of files, (an exaggeration), will result in the re-opening of the CTRRO. This does not seem evident in the circumstances of the matter. Similarly the complaint lodged that the numbers of applicants will increase, is without foundation, as the number has been set by agreement.

49. I think the decisions relied on are not applicable to the matter before me, in as much as I am dealing with an interim application relating to extension of permits, which may be facilitated by the transfer of files, where respondents themselves have requested applicants to apply for the transfer of such files, thereby indicating that they would be in a position to deal with the transfer of those files, albeit under particular circumstances.

50. After setting out detailed reasons why the court could not order the transfer of the files of the applicants, for factual and legal considerations, respondents keep repeating that the applicants have abused the asylum system by refusing to report back to their original application offices or to '*apply for the transfer of their files*'. There is simply no proof or even any conclusive indication that the refugee system is being undermined by the actions or behavior of any of the applicants. How the applicants can be blamed for not applying for their files, (which they deny) while respondents try to convince the court that the transfer of the files should not be

ordered as same will result in capacity and structural problems, beats logic.

Respondents seem to ignore that it was alleged and argued that the applicants are in fact applying for the transfer of their files.

51 Allegedly with the view of accommodating the applicants in this matter, the respondents are prepared to agree to an order that the respondents are directed to extend and/or renew the applicants' permits in terms of s 22 of the Refugees Act at the Cape Town Temporary Refugee Facility for a period of no longer than three (3) months from the date of this order; and an order that the applicants shall, within the above period of three months, report back to their offices where they originally applied for asylum, for the purpose of finalizing their applications for asylum.

52. Respondents propose that they will furnish the applicants' attorneys on 27 February 2015 with a schedule setting forth the dates and times according to which the applicants must present themselves at the CTTRF for the purpose of obtaining their extensions as referred to above, in order to avoid a stampede of applicants seeking the extension of their s 22 permits.

INTERIM ORDER:

53. In this matter the court is merely requested to grant an interim interdict pending the outcome of instituted proceedings. The interdict is aimed at the preservation of the *status quo* relating to the applicants and the permits issued to them by respondents, pending the final determination of their rights. Part of the evaluation by the court, is the aspect of the prospects of success of the application launched by applicants, but I do not have to make any finding of a final nature.

54. In order to succeed with an application for relief of an interim nature the applicants have to satisfy me, on a balance of probability, of a clear legal right, enforceable in law, that forms the subject matter of the main action that applicant

seeks to protect, which could be established *prima facie*, even though open to some doubt. This right applies to basic human rights including fundamental rights protected by the Constitution of the Republic of South Africa.

55. It has been said that such a right may exist even in the event that the presiding officer hearing the interim application may assess the prospects of success of the main claim as weak. The stronger the prospects of success, the less the need for the balance of convenience to favour applicant. It has been held that questions of balance of convenience arise only if an applicant for an interdict has not established a clear right, but only a *prima facie* right open to some doubt, so that when the different requirements are assessed and an applicant has established a strong *prima facie* right, the court may, in exercising its discretion, place less emphasis on the other requirements.

56. The court will weigh up the likely prejudice to the applicant if the temporary interdict is refused and the refusal is later shown to have been wrong, in the sense that applicant's disputed contentions are eventually upheld, against the likely

prejudice to the respondent if the temporary interdict is granted and the grant of the interdict is later shown to have been wrong, in the sense that applicant's disputed contentions are eventually dismissed.

57. A further requirement is the reasonable or well-grounded apprehension of harm or injury if the interim relief is not granted and the applicant ultimately succeeds in establishing the right claimed. The words '*harm*' and '*injury*' are understood in a wide sense to include prejudice suffered by an applicant following the infringement of his rights. The harm must be caused by the respondent or it must be in the respondent's power to prevent the harm.

58. The balance of convenience should favour the granting of interim relief in cases where an applicant has not established a clear right, but a *prima facie* right open to some doubt. It must also be shown that the applicant has no other satisfactory, reasonable or adequate remedy in the circumstances.

59. The process of evaluation of the different elements requires a holistic approach to the contents of the affidavits, balancing facts and assessing the probabilities in the case of disputes of fact. In this case the respondents have chosen not to deny certain facts or respond to applicants' replying affidavit, despite being granted an opportunity to do so. The grant or refusal of an interdict is a matter within the discretion of the court hearing the application and depends on the facts peculiar to each case and the right the applicant is seeking to protect. Ultimately the court exercises a discretion as to whether or not to grant an interim interdict.

60. It was argued on behalf of applicants that the elements of a *prima facie* right, irreparable harm, no adequate alternative remedy and balance of convenience have been proved by them. I agree.

61. It was also argued convincingly that, in assessing the prospects of success in

the second Scalabrini application, this court could merely peruse the application to be satisfied that, even if doubt may exist, the application is not without merit and a prospect of success exists, warranting an interim interdict. This court does not have to and cannot reach a final decision on the merits of the matter and in any event the full application is not before this court.

CONCLUSION:

62. I believe the applicants, as asylum seekers, have established the conclusion that they have *prima facie* rights, although it may be argued that such rights may be open to some doubt. The right which s 21(1) confers on new asylum seekers to apply for asylum in accordance with prescribed procedures to a Refugee Reception Officer at any RRO has been adversely affected by the decision to close the CTRRO. This was also the finding of Rogers J in the Scalabrini matter referred to previously, and this aspect of the decision was not disturbed.

63. The effect of the closure decision of the CTRRO is that the applicants/ asylum seekers will be compelled to leave the Cape Town area where they have established their homes. This result impacts on their rights to dignity and to property and to just administrative action, in terms of the provisions of the Constitution. It is irrational,

unjustifiable and inequitable that the Department will grant s 22 permits to CT asylum seekers but not to non-CT asylum seekers. It would be inhumane to force them to leave Cape Town, prior to finality being reached on the closure decision.

64. Orders have been granted on several occasions, by agreement, albeit without prejudice, which prohibit respondents from refusing the granting of permit extensions in Cape Town to asylum seekers who first applied outside of Cape Town.

65. I believe the applicants have made out a sufficient case for the purposes of the granting of interim relief, as requested. I will not make an order relating to the transfer of files, in view of the strong argument against such order on behalf of respondents and since such an order was not requested in the Notice of Motion. However, I advise the respondents to reconsider this aspect as I believe that ultimately it will be to the advantage of all the parties if the files are transferred or accessed remotely, in order that the applicants' asylum seeker applications may be finalised. Respondents have not counterclaimed that the applicants should be compelled to attend at the original RROs where their applications were lodged and I will not issue such an order.

**66. In view of what I have stated above, I order as follows:
ORDER:**

1. Respondents are directed to extend and/or renew forthwith at the Cape Town Refugee Office, '(CTRO)' or the Cape Town Temporary Refugee Office, '(CTTRO)' the permits in terms of s 22 of the Refugees Act, 130 of 1998, of the listed asylum seekers, described in Annexure 'X', to be annexed, which permits are:

1.1 To be re-extended and/or renewed by the respondents as and when necessary for periods of no less than 6 months at a time;

1.2 Applicants are not to be denied or refused an extension and/or renewal because any of the listed asylum seekers originally applied for asylum at a Refugee

Reception Office, other than Cape Town;

1.3 Applicants are not to be denied or refused an extension or renewal due to the absence of the listed asylum seekers'/applicants' files from the CTTRF.

2. The orders above are to remain valid until the resolution of each listed asylum seeker's application for asylum, including any internal appeals in terms of the Act, or until all legal disputes challenging the closure of the CTRRO have been finally resolved, whichever occurs first.

3. The respondents will furnish the applicants' attorneys on 27 February 2015 or as soon thereafter as possible, with a schedule setting forth the dates and times according to which the applicants must present themselves at the CTTRF for the purpose of obtaining their extensions, referred to above.

4. Applicants will annex to this order the relevant list of asylum seekers seeking extensions/renewals of their asylum seekers' permits in terms of s 22 of the Act, as previously annexed to court orders postponing the matter, marked 'X'.

5. Respondents are directed to jointly and severally pay the applicants' costs of

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